

MEMO ENDORSED



JAMES E. JOHNSON
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THE CITY OF NEW YORK
LAW DEPARTMENT
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January 13, 2020

VIA ECF

Honorable Katherine Polk Failla
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: Angel Garcia v. C.O. Palmenteri, et al.
19 Civ. 7441 (KPF) (HBP)

Your Honor:

I am a Senior Counsel in the Office of James E. Johnson, Corporation Counsel of the City of New York (hereinafter, "the Office"), and the attorney assigned to represent Defendant City of New York in the above-referenced matter. Defendant City respectfully requests that the stay of this action be continued pending the conclusion of the New York City Department of Correction's (hereinafter "DOC") investigation into the underlying incident.

As the Court is aware, Plaintiff alleges in this case, *inter alia*, that on April 15, 2019, while an inmate in DOC custody at the George R. Verno Center, he was subjected to excessive force by Defendant Correction Officer Palmenteri. Plaintiff also alleges that Defendant Palmenteri thereafter refused Plaintiff's request for medical treatment for Plaintiff's hand. See id. Plaintiff further alleges that several hours later, Defendant Captain Charles also refused Plaintiff's request for medical treatment for Plaintiff's hand. See id. at p.4, ¶ 2.

Since the Court granted the stay on October 24, 2019 (ECF No. 18), Defendant City has regularly inquired into the status of the DOC internal investigation, and has been informed that the internal DOC investigation into the alleged incident is still pending.

There are several reasons for the continued stay of this matter. As set forth in Defendant's application dated October 23, 2019, until DOC concludes its investigation, the parties will have very limited access to documents, and other information regarding the incident alleged in this case—and no access to anything generated during the investigation. Without access, this Office will be unable to effectively respond to the complaint, fully participate in court conferences and prepare discovery, or properly assess the case for settlement purposes.

Furthermore, representation of the individually named defendants is still affected by the ongoing investigation as this Office will be unable to make an informed determination as to whether it can represent any of the named defendants until the resolution of the investigation.

Based on the foregoing, and the reasons set forth in Defendant City's letter to the Court dated October 23, 2019, Defendant City respectfully requests that the Court continue to stay the instant matter pending the conclusion of DOC's investigation into the underlying incident. Defendant City can provide another update regarding the status of the investigation as the Court desires.

Defendant City thanks the Court for its consideration in this regard.

Respectfully submitted,



Corey S. Shook

Senior Counsel

Special Federal Litigation Division

cc: Angel Garcia (By U.S. Mail)
DIN No. 11A1764
Plaintiff *Pro Se*
New York State Department of
Corrections and Community Supervision
Elmira Correctional Facility
1879 Davis Street
P.O. Box 500
Elmira, New York 14901-0500

Application GRANTED. This case will continue to be STAYED pending the conclusion of the DOC's investigation into the alleged incident. Defendant City of New York is hereby ORDERED to submit a letter regarding the status of the DOC investigation at the earlier of **(i) March 30, 2020; or (ii) 14 days after the conclusion of the investigation.**

Dated: January 14, 2020
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

A copy of this Order was mailed by Chambers to:

Angel Garcia
DIN No. 11A1764
Elmira Correctional Facility
1879 Davis St
P.O. Box 500
Elmira, NY 14901-0500